

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Application of |) | |
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| Hesketh <i>et al.</i> |) | Art Unit: 1656 |
| |) | |
| Application No. 10/561,734 |) | Examiner: Kim D. Alexander |
| |) | |
| Filing Date: June 12, 2006 |) | Confirmation No. 7801 |
| |) | |
| For: PROTEIN EXPRESSION SYSTEM |) | |

ELECTION UNDER RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NEEDLE & ROSENBERG, P.C.
Customer Number 23859

Sir:

In response to the restriction requirement of October 3, 2007, applicants provisionally elect Group I (claims 1-15, 25 and 27-29), with traverse. Applicants provisionally elect SEQ ID NO:1 as the species with traverse. Claims 1-12, 14-16 and 19-29 read on the elected species.

Applicants also respectfully request that the entire restriction requirement be reconsidered because the Examiner has not shown that a serious burden would be required to examine all the claims. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.
(*Emphasis added.*)

Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2)

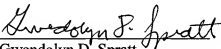
that the search and examination of the entire application cannot be made without serious burden. The present restriction requirement does not satisfy the second criteria, and thus, is improper.

In the present instance, the claims of groups I and II are so closely related that additional searching would not be required to identify any art relevant to both of the groups. Because a search that is adequate to detect art related to the method of groups I would have to detect art relating to the compositions of group II (e.g., claim 16, which is defined by reference to claim 1 of group I), any search that detects art relevant to group I will detect all of the art relevant to group II. Thus, there would be no additional burden to search and minimal additional burden to examine all of the claims together. Thus, withdrawal of the restriction requirement and examination of all of the claims together is respectfully requested.

Furthermore, given the present species election, applicants note that a search for SEQ ID NO:1 would identify all art relevant to either compositions limited to this sequence and all art relevant to uses of this sequence. Thus, there would be no additional burden to search and examine the claims of both groups I and II as they read on SEQ ID NO:1.

No fee is believed to be due at this time; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.


Respectfully submitted,
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Gwendolyn D. Spratt

12-03-07
Date